

Remarks

The Applicant has filed a Request for Continued Examination and respectfully requests the current amendments and the following remarks to be considered. The Applicant has amended claims 70 and 78 to recite that the muntin material is a permeable material. The Milikovsky reference cited in the office action discloses a spacer fabricated from a non-permeable material.

The Applicant also notes that the official position of the United States Patent and Trademark Office is that muntins and spacers are independently patentable as set forth in the office action dated June 2, 2004. The Applicant thus submits the combination of the Milikovsky spacer with the Baier muntin is in appropriate. Muntins are independently patentable over spacers and there is thus no motivation or suggestion provided in the references for combining the teachings. The Applicant thus submits the rejections should be withdrawn.

The final office action rejects claims 62-68, 70-76, and 78-83 as being obvious under § 103(a) in view of US Patent 5,345,743 to Baier in view of US Patent 5,732,517 to Milikovsky. The Applicant respectfully traverses the rejections. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestions or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestions to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. M.P.E.P. § 2142. The Applicant submits these criteria are not met and that a prima facie case of obviousness has not been established.

I. The current office action rejects claims 62-68, 70-76, and 78-83 as being obvious under § 103(a) in view of US Patent 5,345,743 to Baier in view of US Patent 5,732,517 to Milikovsky. The Applicant respectfully traverses the rejections.

a. Milikovsky does not disclose the elements represented in the office action

The Applicant respectfully submits the interpretation of Milikovsky set forth in the office action is not supported by any material within the four corners of the Milikovsky document. Milikovsky discloses an insulating glazing unit and a pair of spacers. Milikovsky does not, however, disclose, teach, or suggest anything about the construction of the spacer body except that the spacer provides a hermetic seal for the glazing unit. Despite the lack of teaching, the office action cites Milikovsky as disclosing "a plurality of insulating cavities," "the insulating cavity extending continuous in the longitudinal direction," as well as the relative spacing of the cavities and the cross sections of the cavities and the body material. The Applicant respectfully traverses the application of Milikovsky in this manner. Nothing in Milikovsky discloses or teaches the use of cavities in the body of the spacer and certainly does not disclose or teach anything about the orientation of cavities within the spacer. The office action includes a marked-up drawing that includes an interpretation of the Milikovsky drawing Figures in order to support the rejection. The Applicant submits that such an interpretation cannot be used to properly support a rejection in this case. MPEP § 2125 provides that drawings may be used as prior art only when the picture shows all of the claimed structural features and how they are put together. The drawings must be evaluated for what the drawings reasonably disclose and suggest to one of ordinary skill in the art. Id. In this case, the office action assumes that the spacers of Milikovsky have openings, that the openings are disclosed longitudinally, and that the opens are continuous in the longitudinal direction. The action also assumes the relative dimensions of the Milikovsky spacers. The action does not, however, cite anything in the Milikovsky reference to support these conclusions. The drawings of Milikovsky reasonably disclose that the Milikovsky spacers are not intended to be a unitary material. The conclusion set forth in the office action that the spacers define openings is a conclusion drawn only with impermissible hindsight drawn from the teachings of Applicant's specification and drawings. Further, the Applicant submits the conclusion of "longitudinal and continuous" is not a reasonable interpretation of the Milikovsky teachings. The Applicant thus submits that the interpretation of the Milikovsky reference

set forth in the office action does not support a prima facie case of obviousness and the rejections should be withdrawn.

b. No Motivation or Suggestion in the References

Element #3 of Milikovsky is a spacer as denoted at Col. 2, line 6 of Milikovsky. This spacer hermetically seals the Milikovsky unit. The Milikovsky spacer is thus not permeable as not recited in claim 70 and 78. The window unit of Milikovsky does not have muntin bars. The Applicant submits there is no reasonable suggestion or motivation in either of the cited references to combine the elements as set forth in the office action.

Spacers and muntin bars are independent and distinct elements in the insulating glass industry. In the office action dated June 2, 2004, in this patent application, the official position of the United States Patent and Trademark Office established that the muntin bar claims of the present application are patentably distinct from the spacer claims of the application. The office action states that "Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper." Id. "Distinct" inventions are patentable over each other. MPEP §802.01(II). In view of the forgoing, the Applicant submits the spacer teachings of Milikovsky cannot be properly combined with the muntin bar teachings of Baier under §103(a). Spacers and muntin bars are independent and distinct inventions serving different purposes and functions in an insulating glass unit. The Applicant thus submits there is no suggestion or motivation in the references to combine the teachings. Further, there is nothing the cited references that establishes a reasonable expectation of success. A *prima facie* case of obviousness thus cannot be established and the claims are thus patentable over the cited combination.

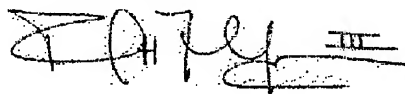
III. Hood Rejections of claims 69,77, and 84-93

The remaining rejections in the application are based on the combination of US 5,156,894 to Hood with the previously-applied combination of Baier and Milikovsky. The Applicants position with respect to the combination of Baier and Milikovsky is

applicable to these rejections. The addition of the Hood spacer teachings does not render the claims obvious. Further, the Applicant notes that many references disclose foamed polymer muntin bars and foamed polymer spacers. For example, the Examiner first reference, Baier, discloses foamed polymer muntin bars (Col. 2, line 60). All of the claims are patentable for the recited combinations of simulated divided lite unit structures.

In view of the foregoing, the Applicant respectfully requests reconsideration of the claims and most earnestly solicits the issuance of a formal Notice of Allowance for the claims.

Please call the undersigned attorney if any issues remain after this amendment.



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I hereby certify that this correspondence (Amendment E in application serial no. 10/613,256 filed 07-03-2003) is being transmitted via facsimile to 571-273-8300, on February 22, 2007.



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